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Supreme Court of the United States

OCTOBER TERM, 1966

No. 1386

ADAM CLAYTON POWELL, JR., et al.,

Plaintiffs-Petitioners,

against

JOHN W. McCORMACK, et al.,

Defendants-Respondents.

Certiorari to the United States Court of Appeals for the District of Columbia

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF THE GRANTING OF CERTIORARI

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Interest of the *Amicus*

The Attorney General of the State of New York, as chief legal officer of the State, is vitally interested in seeing that all of its citizens are represented in the Congress of the United States.

The exclusion of Congressman Adam Clayton Powell on March 1, 1967 from the present session of Congress

has deprived the residents of the 18th Congressional District of the State of New York of a representative in the House of Representatives. A special election held on April 11, 1967 at a cost of substantial public funds resulted in the reelection of Congressman Powell.

In light of the decision of the voters of the 18th Congressional District and in view of the action of the House of Representatives, it appears that a vacuum will continue to exist until the instant action has been determined by this Court.

Accordingly, the Attorney General of the State of New York, pursuant to Rule 42 of the Revised Rules of this Court, appears as *amicus curiae* to urge that this Court grant certiorari in the above action and promptly determine this controversy.

The Instant Case is of Such Imperative Public Importance as to Require Immediate Settlement by This Court.

Rule 20 of the Revised Rules of this Court provides:

> "A writ of certiorari to review a case pending in a court of appeals, before judgment is given in such court, will be granted only upon a showing that the case is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court."

Acting pursuant to this Rule, this Court has by-passed the Circuit Court and has promptly granted certiorari and determined causes which presented issues of grave public importance. See, e.g., *Youngstown Sheet and Tube Company* v. *Sawyer*, 343 U. S. 937, 343 U. S. 579, 584 (1952); *United States* v. *United Mine Workers*, 330 U. S. 258, 269 (1967).

It is not our position to comment on the merits of this controversy, but only to point out the need for an immediate resolution of this issue. The 431,330 residents of the 18th Congressional District in New York have, in fact, been deprived of representation in the Congress of the United States since the start of the present session of Congress. The right of citizens to elect and be represented by legislators of their choice has long been recognized as "a fundamental political right, because preservative of all rights." *Yick Wo* v. *Hopkins*, 118 U. S. 356, 370 (1886); *Reynolds* v. *Sims*, 377 U. S. 533, 562 (1964). In *Wesberry* v. *Sanders*, 376 U. S. 1, 17-18 (1964), this Court observed:

> "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live."

Until the issue raised by this case has been determined, the residents of the 18th Congressional District will continue to be without the services of a representative in the Congress of the United States. If this action is left to be reviewed by the Court of Appeals, it is probable that any decision rendered there will be challenged in this Court with a resultant delay in affording representation to Congressman Powell's district.

It is, therefore, imperative that the instant controversy be determined promptly by this honorable Court so that the question of representation in the 18th Congressional District can be resolved without further delay.

CONCLUSION

We respectfully request that this Court grant certiorari and promptly determine the instant controversy.

Dated: New York, New York, May 15, 1967.

Respectfully submitted,

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